

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

DAVID S. YARNELL,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 05-527-SLR
	)	
CORPORAL ANTHONY MENDEZ,	)	
DELAWARE STATE POLICE, and )	)	
MILLSBORO POLICE DEPARTMENT,	)	
	)	
Defendants.	)	

**STATE DEFENDANTS' ANSWER TO THE COMPLAINT**

Pursuant to Rule 12(a) of the Federal Rules of Civil Procedure, the Department of Justice, on behalf of defendants Corporal Anthony Mendez and the Delaware State Police (together "the State Defendants"), answers the complaint of plaintiff David S. Yarnell ("Yarnell"). The numbered paragraphs in this answer correspond to the numbered paragraphs in the complaint. Unless specifically admitted or otherwise qualified, the State Defendants generally deny the allegations in the complaint.

I.A. Since the complaint states "N/A" no answer is required.

II.A. Since the complaint states "N/A" no answer is required.

II.B. Ibid.

II.C. Ibid.

II.D. Ibid.

III.(1) Admitted.

III.(2) Admitted.

III.(3). Admitted.

IV.1. Admitted that in trying to take plaintiff into custody while plaintiff was resisting arrest Corporal Mendez struck plaintiff twice in the head with a flashlight in self-defense and using a reasonable amount of force under the circumstances to take plaintiff into custody.

IV.2. Admitted that plaintiff was taken to Beebe Hospital. The State Defendants are without sufficient information to admit or deny the remaining allegations in this paragraph.

V.1. This is prayer for relief to which an answer is not required.

V.2. This subparagraph is blank so no answer is required.

V.3. This subparagraph is blank so no answer is required.

#### **FIRST AFFIRMATIVE DEFENSE**

The complaint fails to state a claim upon which relief can be granted as a matter of law.

#### **SECOND AFFIRMATIVE DEFENSE**

The Division of State Police are immune from suit under the Eleventh Amendment of the United States Constitution.

#### **THIRD AFFIRMATIVE DEFENSE**

The Division of State Police are not subject to suit under 42 U.S.C. §1983 because the Division is not a "person" for purposes of Section 1983.

**FOURTH AFFIRMATIVE DEFENSE**

Defendant Mendez is immune from suit for damages in his official capacity under the Eleventh Amendment to the United States Constitution. The complaint does not seek prospective injunctive relief against Mendez in his official capacity under Section 1983.

**FIFTH AFFIRMATIVE DEFENSE**

Defendant Mendez enjoys qualified immunity from suit in his individual capacity.

**SIXTH AFFIRMATIVE DEFENSE**

The State Defendants are not amenable to suit for damages for any state law claim under the State Tort Claims Act, 10 Del. C. Chapter 40, because they did not act with gross or wanton negligence.

Respectfully submitted,

/s/ W. Michael Tupman  
W. Michael Tupman  
Deputy Attorney General  
Department of Justice  
102 West Water Street, 3<sup>rd</sup> Floor  
Dover, DE 19904  
(302) 739-7641  
Attorney for State Defendants

Dated: January 3, 2006

**CERTIFICATE OF SERVICE**

I hereby certify that on this 3<sup>rd</sup> day of January, 2006 I filed electronically a copy of the State Defendants' Answer to the Complaint; on that same date I caused to be served by first-class U.S. Mail, postage prepaid, a hard copy of that Answer to the Clerk of the Court; and on that same date I caused to be served by first-class mail, postage prepaid, two true and correct copies of that Answer to:

Bruce C. Herron, Esquire  
Akin & Herron, P.A.  
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P.O. Box 25047  
Wilmington, DE 19899  
Attorney for Defendant Millsboro Police Department

David S. Yarnell  
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P.O. Box 370  
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Plaintiff *pro se*

/s/ W. Michael Tupman  
W. Michael Tupman